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POST-CONFIRMATION TRUST

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;

vs.

Plaintiff,

-) CIVIL NO. CV03-00385 SOM-LEK
-) (Copyright)
-)
-) **CONCISE STATEMENT OF THE**
-) **CASE TO BE READ DURING VOIR**
-) **DIRE (PER MAY 2, 2005 AMENDED**
-) **SCHEDULING ORDER,**
-) **PARAGRAPH 18); SUGGESTED**
-) **TOPICS FOR VOIR DIRE**

HAWAIIAN EXPRESS SERVICE,)	
INC., et al.,)	Judge: Hon. Susan O. Mollway
)	Trial Date: January 24, 2006
Defendants.)	
)	Hearing Date: January 20, 2006
)	Hearing Time: 2:00 p.m.

**CONCISE STATEMENT OF THE CASE TO BE READ DURING VOIR
DIRE (PER MAY 2, 2005 AMENDED SCHEDULING
ORDER, PARAGRAPH 18)**

The Plaintiff in this case, Wayne Berry, is a software designer. Mr. Berry is suing Fleming Companies, Inc., a grocery wholesaler that operated in Hawaii, and seven individuals who were employed by Fleming at its facility in Kapolei: Mark Dillon, Teresa Noa, Melvin Ponce, Sonia Purdy, Justin Fukumoto, Alfredda Waiolama, and Jacqueline Rio.

Mr. Berry authored, and has the copyright in, certain software that he permitted Fleming to use, for free. Fleming used the software to track freight -- primarily grocery products -- shipped from the mainland to Hawaii. Berry calls this freight tracking software Freight Control System 1993, or "FCS 1993," because it was first completed in 1993. In this lawsuit Mr. Berry has claimed that Fleming and the former employees infringed his copyright by making changes to the software he licensed to Fleming and then using that software to track freight between April 1, 2003 and June 9, 2003. On June 9, 2003, Fleming stopped using Mr. Berry's software entirely.

The Court has already determined that Fleming and the former Fleming

employees did not intend to infringe Mr. Berry's rights. They did so by mistake. You will be asked to determine how much, if at all, Fleming profited from its inadvertent infringement. You will also be asked to determine the amount of other actual damages, if any, Mr. Berry has suffered as a result of the inadvertent infringement by Fleming and the former Fleming employees.

Mr. Berry contends he suffered significant damage and that Fleming made significant profit. Fleming contends Mr. Berry suffered no damage; and that it didn't profit. Fleming filed for bankruptcy for unrelated reasons on April 1, 2003.

DEFENDANT PCT'S SUGGESTED TOPICS FOR VOIR DIRE

Defendant the Post-Confirmation Trust for the Fleming Companies, Inc., respectfully submits the following suggested topics for *voir dire*:

1. Has anyone ever been a party to a lawsuit before?
2. Does anyone know any of the parties to this case?
3. Basic questions about age, city of residence, current employment, etc.
4. Other basic questions about prior jury service / criminal background, etc.
5. Does anyone have any experience designing software?
6. Does anyone have any family members or close friends who design software?
7. Does anyone have any experience working specifically with Microsoft Access?
8. Does anyone hold a registered copyright in anything?
9. Has anyone ever been involved in the grocery industry in any form?

10. Has anyone ever been involved in shipping or wholesale distribution for any industry?

Dated: Honolulu, Hawaii, January 10, 2006.

KOBAYASHI, SUGITA & GODA

/s/ *Thomas H. Yee*

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THE POST CONFIRMATION TRUST

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